

comments received on it shall be considered along with hearing testimony in making a decision on the merits of the proposed action, and in making findings on compliance with s. 1.11, Stats. Testimony regarding the content of the environmental impact statement or cross-examination of persons responsible for specific portions of the environmental impact statement shall be allowed. No person may use an environmental impact statement or any portion thereof as the exclusive means of meeting a burden of proof of any statutory requirements for an approval, license or permit in a contested proceeding except upon stipulation of the parties.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. (1) and cr. (6), Register, March, 1984, No. 339, eff. 4-1-84; r. and recr. (6), Register, June, 1985, No. 354, eff. 7-1-85.

NR 2.15 Close of hearing. (1) **CLOSING AND BRIEFS.** A hearing in a contested case shall be closed upon completion of the submission of all evidence and expiration of the period fixed for filing of briefs. If the time for filing briefs has expired and the brief of one or more parties is not filed within such time, the department or hearing examiner may proceed to the determination of the case. Extension of time to file briefs may be granted by the department or the hearing examiner upon good cause shown.

(2) **ADDITIONAL EVIDENCE.** If by stipulation of the parties, documentary evidence is permitted to be submitted after the close of testimony, the record will be closed when such documentary evidence is received by the department or when the specified time for furnishing it has elapsed without its being furnished. The hearing examiner may, upon the request of the stipulating parties, extend the time as originally prescribed for filing such additional evidence.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. (1) Register, March, 1984, No. 339, eff. 4-1-84.

NR 2.155 Decisions in contested cases. (1) **EXAMINER DECISION.** The hearing examiner shall prepare findings of fact, conclusions of law and decision subsequent to each contested case heard. Unless the department petitions for judicial review as provided in s. 227.46 (8), Stats., the decision shall be the final decision of the department, but may be reviewed in the manner described in s. NR 2.20. Every decision shall include findings regarding compliance with the requirements of s. 1.11, Stats.

(2) **SECRETARY DECISION.** (a) Notwithstanding sub. (1) the secretary, prior to hearing, may direct that the record be certified to the secretary or secretary's designee for decision in accordance with the provisions of s. 227.46 (3) (b), Stats., without an intervening decision by the hearing examiner.

(b) Notwithstanding (1) the secretary prior to hearing may direct that the decision be made in accordance with the provisions of s. 227.46 (2) or (4), Stats.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77; emerg. am. (2) (a), eff. 10-1-82; am. (2) (a), Register, May, 1983, No. 329, eff. 6-1-83; am. (1), Register, June, 1985, No. 354, eff. 7-1-85; am. (1), Register, September, 1986, No. 369, eff. 10-1-86.

NR 2.16 Reopening hearings. When a hearing in a contested case is closed, no further evidence shall be received, except by order of the department or the hearing examiner reopening a closed contested case for the taking of further evidence upon application of a party showing to the department's or the hearing examiner's satisfaction that the evidence is

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newly discovered or was not available at the time of the hearing and that the evidence is necessary for a just disposition of the case.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. Register, March, 1984, No. 339, eff. 4-1-84.

NR 2.17 Transcripts in contested cases. (1) METHOD AND COPIES. Hearings shall be recorded either stenographically or electronically. A typed transcript shall be made when deemed necessary by the department or the hearing examiner. If a transcript is made by the department or the division of hearings and appeals, copies shall be furnished to all persons upon request and payment of a reasonable fee, as determined by the department or the division of hearings and appeals. If no transcript is deemed necessary by the department or the hearing examiner and a party requests that one be prepared, that party shall be responsible for all costs of transcript preparation. If several parties request transcripts, the department may divide the costs of transcription equally among the parties. In lieu of a transcript the department or the division of hearings and appeals may provide any person requesting a transcript with a copy of the tape recording of the hearing upon payment of a reasonable fee. All requests for transcripts shall be made in writing and sent to the hearing examiner who presided at the hearing.

(2) FINANCIAL NEED. Any person who by affidavit or other appropriate means can establish to the satisfaction of the department or the administrator of the division of hearings and appeals that the person is impecunious and has a legal need may be provided with a copy of a transcript without charge.

(3) CORRECTIONS. Any party, within 7 days of the date of mailing of the transcript, may file with the hearing examiner a notice in writing of any claimed error therein, and shall mail a copy of such notice to each party of record. Other parties may contest any claimed error within 12 days of the date of the mailing of the transcript by so notifying the hearing examiner and other parties of record. All parties will be advised by the hearing examiner of any authorized corrections to the record.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. Register, December, 1976, No. 252, eff. 1-1-77; am. (1) and (2), Register, March, 1984, No. 339, eff. 4-1-84.

NR 2.18 Briefs. (1) TIME FOR BRIEFS. In contested cases, parties shall indicate on the record after the close of testimony at the hearing whether they desire to file briefs. The hearing examiner may establish a schedule for the filing of briefs. The party or parties having the burden of proof shall file the first brief. Other parties may then file response briefs, which may be replied to. In the alternative, the hearing examiner may direct that briefs of all parties be filed simultaneously.

(2) NUMBER. Five copies of all briefs shall be filed with the department together with a certification showing when and upon whom copies have been served. Briefs which contain a summary of evidence or facts relied upon shall include reference to specific pages of the record containing such evidence.

(3) EFFECT OF EARLY FILING. The filing of briefs in less time than allowed shall not change the due dates for the remaining briefs.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am., (1), Register, March, 1984, No. 339, eff. 4-1-84.